

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:

BLUE CROSS BLUE SHIELD 2:13-20000-RDP
ANTITRUST LITIGATION, SEPTEMBER 17, 2015
MDL 2406. BIRMINGHAM, ALABAMA

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TRANSCRIPT OF MONTHLY DISCOVERY/STATUS CONFERENCE
BEFORE THE HONORABLE T. MICHAEL PUTNAM,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR BLUE CROSS BLUE SHIELD
ANTITRUST LITIGATION MDL 2406:
ANDREW PHILLIP CAMPBELL, ESQ.
CAMPBELL, GUIN, WILLIAMS, GUY AND
GIDIERE, LLC
BIRMINGHAM, ALABAMA

SPECIAL MASTER:
EDGAR C. GENTLE, III
GENTLE, TURNER, SEXTON & HARBISON
HOOVER, ALABAMA

1 APPEARANCES (CONTINUED)

3 BARRY RAGSDALE, ESQ.

4 CHRIS HELLUMS, ESQ.

5 TUCKER BROWN, ESQ.

6 KIM WEST, ESQ.

7 TODD STENERSON, ESQ.

8 JASON GOURLEY, ESQ.

9 MEGAN JONES, ESQ.

10 JOSEPH WEBSTER, ESQ.

12 COURT REPORTER:

13 LINDY M. FULLER, RMR, CRR

14 BIRMINGHAM, ALABAMA 35203

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P R O C E E D I N G S

(IN OPEN COURT, 10:07 A.M.)

THE CLERK: PLEASE REMAIN SEATED AND
COME TO ORDER.

THE COURT: GOOD MORNING. THIS IS IN
THE IN RE BLUE CROSS BLUE SHIELD ANTITRUST
LITIGATION, MDL NUMBER 2406, AND THAT'S MASTER
FILE NUMBER HERE IN THE NORTHERN DISTRICT 13-CV-
20000-RDP.

AND WE HAVE SCHEDULED FOR HEARING THIS
MORNING A MOTION FOR PROTECTIVE ORDER BY BLUE
CROSS BLUE SHIELD OF MICHIGAN AS WELL AS A MOTION
TO COMPEL PRODUCTION OF DOCUMENTS THAT THEY BOTH
MOTIONS RELATE TO THE SAME ISSUE; THAT IS,
DOCUMENT MADE BY THE PLAINTIFFS ARISING OUT OF
THE NOW-COMPLETED BLUE CROSS BLUE SHIELD AETNA
LITIGATION IN MICHIGAN.

I AM GOING TO START, BECAUSE THE ISSUE
FIRST GOT STARTED WITH THE PROTECTIVE ORDER, I
GUESS I WILL START WITH BLUE CROSS BLUE SHIELD
MICHIGAN'S ARGUMENT ON THAT PROTECTIVE ORDER.

MS. WEST: GOOD MORNING, YOUR HONOR.
MR. CAMPBELL WILL BE ADDRESSING THAT MOTION.

THE COURT: GOOD MORNING. THANK YOU.

MR. CAMPBELL: YOUR HONOR, MAY IT

1 PLEASE THE COURT, WE ALSO HAVE TODD STENERSON,
2 WHO IS LEAD COUNSEL IN THE AETNA CASE, AND JASON
3 GOURLEY HERE AS WELL, YOUR HONOR, AND THEY MAY
4 SPEAK AS WELL.

5 YOUR HONOR, THE ISSUES OVERLAP AND ARE
6 INTERRELATED BETWEEN THE MOTION TO COMPEL AND THE
7 MOTION FOR PROTECTIVE ORDER. BUT WE FILED A
8 MOTION FOR PROTECTIVE ORDER, YOUR HONOR, BECAUSE,
9 RATHER THAN STREAMLINING THIS CASE AND DISCOVERY
10 PROCESS IN THE CASE, WE STRONGLY BELIEVE THAT OUR
11 BRIEF SET THIS OUT, YOUR HONOR, WHICH THE COURT
12 HAS, THAT ALLOWING OR GRANTING AN ORDER
13 COMPELLING ANY PORTION OF THESE DOCUMENTS, A
14 TOTAL OF 11 MILLION DOCUMENTS WHICH THE
15 PLAINTIFFS ULTIMATELY SEEK, AND THEY MADE NO
16 BONES ABOUT THAT. OR THE SO-CALLED STREAMLINED
17 DOCUMENTS, WHICH, AS I WILL SHOW THE COURT IN A
18 SECOND, REPRESENTS HUNDREDS OF THOUSANDS OF
19 DOCUMENTS, WOULD HAVE POSED AN ONEROUS BURDEN ON
20 BLUE CROSS TO THE POINT OF BEING PUNITIVE, YOUR
21 HONOR. IT WOULD BASICALLY NOT STREAMLINE
22 DISCOVERY, IT WOULD FORCE US TO REDACT BETWEEN
23 CONFIDENTIAL AND NON-CONFIDENTIAL MATTERS AND RUN
24 AFOUL OF PROTECTIVE ORDERS OTHERWISE. AND, IN
25 EFFECT, HAVE BLUE CROSS REDO THE DISCOVERY

1 PROCESS WITHOUT ANY COUNTER VEILING BENEFIT.

2 PART OF THE PURPOSE OF STREAMLINING IS
3 RECIPROCITY, THERE IS SOME WAY TO SAVE ONE OF THE
4 PARTIES SOME AMOUNT OF EXPENSE OR TIME IN
5 RESPONDING. THIS REQUIRES US TO DO IT TWICE.
6 AND IT IS NOTEWORTHY, YOUR HONOR, THAT RIGHT NOW,
7 MANY OF THE CATEGORIES BEING SOUGHT ARE SUBJECT
8 TO THE REQUEST FOR PRODUCTION THAT WERE FILED IN
9 JANUARY AND SUBJECT TO NEGOTIATIONS OVER SCOPE,
10 THOSE DOCUMENTS WILL BE PRODUCED.

11 THE COURT: I GUESS I AM NOT
12 UNDERSTANDING WHY, IF YOU GO THROUGH A CERTAIN --
13 SMALLER AND SMALLER MAY BE A RELEVANT TERM
14 HERE -- BUT YOU GO THROUGH A SMALLER SUBSET OF
15 DOCUMENTS AND WHATEVER YOU DO WITH THOSE, REDACT
16 THEM, WHATEVER YOU DO, AND PRODUCE THOSE, AND
17 THEN YOU MOVE ONTO THE REMAINING DOCUMENTS, WHY
18 DO YOU HAVE TO REDO THE EARLIER SET OF DOCUMENTS?

19 MR. CAMPBELL: WELL, THAT'S THE
20 PROBLEM, YOUR HONOR, BECAUSE THE AETNA LITIGATION
21 DOESN'T COVER THE WATERFRONT OF THE DOCUMENTS
22 REQUESTED HERE. AND MANY OF THE AETNA DOCUMENTS
23 HAVE NOTHING TO DO WITH THIS CASE BECAUSE AETNA,
24 THE COURT IS AWARE FROM READING THE COMPLAINT,
25 BASICALLY INVOLVED AN ATTACK ON MFNs IN THE STATE

1 OF MICHIGAN WITH ABOUT 132 MICHIGAN HOSPITALS.
2 AND THERE IS NO ALLEGATIONS OF TERRITORY
3 RESTRAINTS, THERE ARE NO ALLEGATIONS OF PRICE
4 FIXING. IN FACT, THE THEORY THERE WAS THAT
5 BECAUSE OF THESE MFNS IN THE STATE OF MICHIGAN,
6 MICHIGAN HOSPITALS WERE CHARGING MORE TO AETNA.
7 THE CLAIM WAS NOT BROUGHT BY A PROVIDER OR A
8 SUBSCRIBER, IT'S BROUGHT BY A COMPETITOR.

9 SO WHAT WE HAVE, YOUR HONOR, IS A
10 SITUATION WHERE, IN THIS CASE, IF YOU LOOK AT THE
11 REQUESTS, WHICH ARE SPECIFICALLY 68, 90, 136,
12 157, 80, AND 71, OF THEIR REQUESTS FOR
13 PRODUCTION, THEY HIT THE SAME DOCUMENTS THAT ARE
14 RELEVANT IN THIS CASE, WE ARE GOING TO RESPOND TO
15 AND REQUEST. BUT WHAT THEY ARE SEEKING OR
16 REQUIRE US TO DO, YOUR HONOR, IS GO OFF ON A
17 TANGENT AND JUST PALL MALL PRODUCE EXHIBITS. FOR
18 EXAMPLE, ON LOSS PROFITS IN MICHIGAN, WHICH HAVE
19 NOTHING TO DO WITH THIS CASE AND INVOLVE A
20 COMPETITOR'S CLAIM OF LOST PROFITS BASED ON THESE
21 MFNS.

22 SO, IT'S APPLES AND ORANGES. AND, YOUR
23 HONOR, BEFORE WE GET TO THE ELEPHANT IN THE ROOM,
24 THE PROTECTIVE ORDER, I WILL SAY THAT COURTS
25 UNIFORMLY AROUND THIS COUNTRY HAVE REJECTED THIS

1 IDEA OF A LITIGANT COMING IN, SAYING GIVE ME THIS
2 FILE AND ALL THE FILES OR THE EXPERT LIST FROM
3 ANOTHER PIECE OF LITIGATION.

4 THE CASE WE CITED INVOLVING THE TYSON
5 FOOD CASE IS VERY CLEAR, YOUR HONOR, AS WELL AS
6 THE OTHER CASE CASES WE CITED. THERE ARE SIX OR
7 SEVEN OF THEM: CHEN, PAYNE --

8 THE COURT REPORTER: SLOW DOWN, PLEASE.

9 MR. CAMPBELL: -- I'M SORRY. MURPHY.
10 MAGISTRATE JUDGE KELLY'S DECISION IN THE KELLY
11 CASE -- OR MAGISTRATE JUDGE CHAPPELL'S IN THE
12 KELLY CASE ALL STAND FOR THE PROPOSITION IF YOU
13 HAVE OUTSTANDING REQUESTS FOR PRODUCTION IN THIS
14 CASE THAT GO AFTER THOSE MATERIALS, YOU NEED TO
15 DO THAT. YOU CANNOT COME IN AND REQUEST PALL
16 MALL A FILE, EVEN THOUGH IT'S A REDUCED FILE FROM
17 A PRIOR CASE. THERE IS JUST NO BASIS FOR DOING
18 THAT. IT'S OVER BROAD, ITS ONEROUS ON THE
19 DEFENDANT BECAUSE THE DEFENDANT STILL HAS TO
20 RESPOND TO THESE REQUESTS FOR PRODUCTION.

21 AND, YOUR HONOR, IF I MAY APPROACH, I
22 WOULD LIKE TO HAND THE COURT A CHART OF WHAT WE
23 ARE DEALING WITH --

24 THE COURT: SURE?

25 MR. CAMPBELL: -- IN TERMS OF THE

1 PROTECTIVE ORDERS AND THE CONFIDENTIALITY.

2 THIS WAS PREPARED AFTER SPENDING MANY
3 HOURS GOING THROUGH WHAT IS REQUESTED AS A,
4 QUOTE, STREAMLINED VERSION BEFORE YOU TODAY. AND
5 I WOULD STATE THAT THE PLAINTIFFS, YOUR HONOR,
6 ARE SAYING THEY WANT 11 MILLION DOCUMENTS. THEY
7 ARE JUST SEEKING ABOUT THREE MILLION TODAY -- NOT
8 THREE MILLION, SEVERAL HUNDRED THOUSAND TODAY
9 PUBLIC FILES, TRIAL EXHIBITS, AND THE DEPOSITION
10 TRANSCRIPTS.

11 FOR EXAMPLE, YOUR HONOR, IF YOU LOOK
12 AT THE TOTAL TRIAL EXHIBITS, THERE ARE 6,926 ON
13 THE PRELIMINARY EXHIBIT LIST IN THE AETNA CASE.
14 THE FINAL EXHIBIT LIST WAS NEVER EXCHANGED, YOUR
15 HONOR. SO WE DON'T KNOW WHAT THAT WOULD HAVE
16 BEEN. BUT THE PRELIMINARY EXHIBIT LIST OF THAT
17 6,926 DOCUMENTS -- 6,400 DOCUMENTS ARE PROTECTED
18 BY THE PROTECTIVE ORDER, WHICH IS STILL IN
19 EXISTENCE.

20 AND, YOUR HONOR, BY THE WAY, THE
21 CONSOLIDATING CASE OF SHANE GROUP IS STILL OPEN.
22 IT'S ON APPEAL, AND OPT-OUTS IN THAT CASE HAS
23 FILED ANOTHER CASE AGAINST BLUE CROSS, SO THAT
24 CASE IS PREPARING THESE PRELIMINARY ORDERS AS THE
25 TUCKER CASE AND OTHER CASES WE HAVE CITED FOR THE

1 COURT REMAIN INTACT AND APPLICABLE. AND THE
2 PLAINTIFFS HAVE NOT ADDRESSED THEM EXCEPT TO THE
3 EXTENT OF AETNA, THEY SAY AETNA'S FREE, HAS
4 CONSENTED TO PRODUCTION.

5 WE HAVE BEEN IN TOUCH WITH AETNA.
6 THAT'S NOT EXACTLY WHAT AETNA HAYES SAID. AETNA
7 HAS SAID, WITH RESPECT TO EXHIBITS, WE, OUR
8 EXHIBITS THAT WE PRODUCED THAT NOBODY ELSE IS
9 INVOLVED WITH, WE MIGHT AGREE TO THAT, AND
10 THAT'S, AS FAR AS THAT'S GONE.

11 I WANT TO MAKE A POINT ABOUT THAT,
12 YOUR HONOR. THIS IS PRACTICALITY POINT NOT
13 ADDRESSED IN THE BRIEFS. PLAINTIFFS' COUNSEL IN
14 THIS CASE WERE ALSO PLAINTIFFS' COUNSEL IN THAT
15 CASE. THAT ARGUMENT THAT THEY NEED TO DISCOVER
16 OUR STRATEGIES IN THAT CASE, WHAT OUR ROAD MAP
17 WAS, THEY KNOW THAT ALREADY. GUSTAVSON FIRM,
18 WHICH IS INVOLVED IN THIS CASE, THE SUMMER
19 SCHWARTZ FIRM, WHICH IS PLAINTIFF'S COUNSEL IN
20 THIS CASE, THEY WERE PLAINTIFF'S COUNSEL IN
21 MICHIGAN. THEY HAVE, NUMBER ONE, THEY ARE
22 FAMILIAR WITH WHAT THE STRATEGY WAS, AND THAT'S A
23 RED HERRING HERE BECAUSE THEY WERE IN THAT CASE.
24 THEY NEGOTIATED, IN FACT, THE GUSTAVSON FIRM
25 NEGOTIATED THE SHANE SETTLEMENT. SO THE ARGUMENT

1 THEY NEED TO KNOW OUR STRATEGY IS A RED HERRING.
2 THEY KNOW THAT ALREADY BECAUSE THEY ARE IN THIS
3 CASE.

4 SECONDLY, THEIR ARGUMENT, WELL, THE
5 BURDEN IS ON BLUE CROSS TO GO TO ALL OF THOSE
6 THIRD PARTIES AND GET THEIR CONSENT. THEY KNOW
7 WHO ALL THOSE THIRD PARTIES ARE; THEY GOT
8 SUBPOENAS. COUNSEL IN THIS CASE SAT THROUGH THE
9 DEPOSITIONS. THEY ARE FAMILIAR WITH THOSE
10 SUBPOENAS. THEY ARE CAPABLE OF SUBPOENAING THOSE
11 THIRD PARTIES AND THE BURDEN IS NOT ON BLUE CROSS
12 UNDER THE CASE LAW TO GO THROUGH AND FERRET OUT
13 AND TRY TO DO CONSENT FOR THEM. THE BURDEN IS ON
14 THEM TO GET CONSENT OR TO FILE A SUBPOENA.

15 BUT, YOUR HONOR, I HAVE CITED THE
16 LAW -- IN FACT, THE RULE AROUND THE COUNTRY IS
17 THAT, I THINK, THE QUICKEST WAY FOR THEM TO DEAL
18 WITH THESE DOCUMENTS THAT ARE PROTECTED, AS THE
19 COURT CAN SEE, IT'S ALMOST ALL OF THE
20 DEPOSITIONS, 199 OUT OF 211, EITHER COMPLETELY
21 SEALED PROTECTIVE ORDERS OR CONTAINED
22 CONFIDENTIAL MATERIAL, ALMOST ALL OF THEM EXCEPT
23 FOR 500 TRIAL EXHIBITS, EVEN PUBLIC FILINGS, HAVE
24 ALMOST 200 UNDER SEAL OR UNDER PROTECTIVE ORDERS.
25 THE QUICKEST WAY FOR THEM TO GET RELIEF FROM

1 THAT, IF THEY ARE SERIOUS, YOUR HONOR, IS TO FILE
2 A MOTION TO INTERVENE IN FRONT OF JUDGE DENISE
3 HOOD.

4 I HAVE CITED TO YOU THE SNYDER CASE IN
5 FLORIDA, YOUR HONOR, A CASE I WAS INVOLVED IN,
6 WITH -- BILL PRYOR WAS THE LEAD PLAINTIFF'S
7 LAWYER AT THAT TIME IN THAT CASE, JUDGE SNYDER'S,
8 AND THE BUTTERWORTH CASE HELD THEM TO PROPER
9 MEANS OF TRYING TO GO AROUND A PROTECTIVE ORDER
10 ENTERED IN ANOTHER JURISDICTION, IN THIS CASE,
11 MICHIGAN, BY JUDGE HOOD, IS TO FILE A MOTION TO
12 INTERVENE THERE.

13 THE TUCKER CASE SAYS THAT, THE SSL
14 CASE SAYS THAT, THE MIDI'S GAS CASE SAYS THAT.
15 THAT IS THE WAY TO DO IT. YOU FILE A MOTION TO
16 INTERVENE UNDER RULE 24-A WITH THE MICHIGAN COURT
17 AND YOU SEEK TO HAVE THE PROTECTIVE ORDER
18 MODIFIED. NO ONE HAS ATTEMPTED THAT REMEDY IN
19 THIS CASE.

20 NOW, YOUR HONOR, I WILL SAY THIS. THE
21 DEFENDANTS ARE NOT HERE TO DELAY DISCOVERY. WE
22 ARE NOT HERE TO THROW DOWN A MARKER AND SAY WE
23 WANT TO DELAY. THE SUGGESTION IN THE BRIEF THAT
24 WE ARE TRYING TO HIDE THE BALL AND AVOID OUR
25 OBLIGATIONS IS OFFENSIVE TO ME. WE ARE FULLY

1 GOING TO REPLY WITH THE REQUESTS OUTSTANDING.

2 IN FACT, YOUR HONOR, IF YOU LOOK AT
3 REQUEST NUMBER 68, IT ASKS FOR ALL DOCUMENTS
4 RELATING TO PRICING, MARKET POWER, MARKET ENTRY.
5 WE ARE GOING TO RESPOND TO THAT. THAT'S GOING TO
6 COVER THE DOCUMENTS THEY WANT. RULES, REQUEST
7 NUMBER 71, COMPETITION WITH OTHER COMPANIES.
8 NUMBER 80, AND NUMBER 93, ALL DOCUMENTS RELATING
9 TO GO MFNs. THE PROBLEM WITH SAYING YOU CAN DO
10 IT THAT WAY LIKE THEY ARE TRYING TO DO NOW, GET
11 ALL THE AETNA STUFF AND GO THIS ROUTE, TOO, IS
12 THAT IS TERRIBLY -- THESE CASES HAVE POINTED OUT,
13 LIKE THE EDMONDSON CASE INVOLVING TYSON FOODS
14 ONLY INVOLVE 50,000 DOCUMENTS FROM EARLIER
15 LITIGATION. KELLY ONLY INVOLVED THE EXPERT
16 REPORTS. BUT IN THOSE CASES, THE COURTS NOTED,
17 YOU HAVE OUTSTANDING REQUEST FOR PRODUCTION THAT
18 GO TO THESE ISSUES. YOU FOLLOW THAT COURSE.
19 LET'S DON'T GIVE UP THE RULES OF DISCOVERY IN
20 ORDER TO HAVE EXPEDIENCY.

21 THE COURT: WELL, ALONG THAT LINE,
22 THOUGH WE HAVE A MOTION TO COMPEL PENDING, WHY
23 SHOULDN'T I JUST ORDER BLUE CROSS MICHIGAN TO
24 RESPOND TO THOSE QUESTIONS? YOU HAVE GOT 20 DAYS
25 TO RESPOND. WHY SHOULDN'T I DO THAT?

1 MR. CAMPBELL: WELL, YOUR HONOR, THE
2 REQUESTS OUTSTANDING ARE BEING RESPONDED TO --

3 THE COURT: I KNOW. BUT THE REQUEST
4 HAS BEEN OUTSTANDING SINCE JANUARY.

5 MR. CAMPBELL: -- AS I UNDERSTAND IT.

6 THE COURT: NOW, IT'S BEEN TEED UP.
7 THERE IS A MOTION TO COMPEL THAT'S BEEN FILED BY
8 THE PLAINTIFF. WHY DON'T I JUST COMPEL YOU TO
9 RESPOND?

10 MR. CAMPBELL: HASN'T BEEN A MOTION TO
11 COMPEL SIGNED, YOUR HONOR, ON THOSE REQUESTS THAT
12 I AM GOING THROUGH BECAUSE THAT'S STILL BEING
13 NEGOTIATED IN TERMS OF SCOPE. BUT THE COURT
14 ENTERED AN ORDER THAT DISCOVERY WILL BE COMPLETED
15 BY JULY. WHAT THEY ARE MOVING TO COMPEL YOU ON
16 IS AN INFORMAL REQUEST WHICH THEY SAY IS AN
17 EXTENSION OF 157, WHICH WE DISAGREE WITH, WHICH
18 BASICALLY IS FOR ALL THE AETNA LITIGATION
19 MATERIALS. IRREGARDLESS OF WHETHER THEY FIT
20 WITHIN THESE REQUESTS OR NOT. ALL 11 MILLION
21 DOLLARS, ALL 11 MILLION AETNA FILES.

22 NOW, THEY HAVE REDUCED IT TO THE
23 EXHIBITS, EXPERT REPORTS, DEPOSITIONS. THE
24 PROBLEM WITH THAT, YOUR HONOR, IN OUR VIEW, IS
25 RELEVANCY. IT'S BASICALLY NOT GETTING TO WHAT'S

1 RELEVANT IN THIS CASE. IT'S GOING TO BASICALLY
2 REQUIRE US TO PRODUCE DOCUMENTS THAT HAVE NO
3 RELEVANCE BECAUSE THAT IS A TOTALLY DIFFERENT
4 CASE TO THIS CASE.

5 AND I WOULD ADD, YOUR HONOR, THERE IS
6 NO CLAIM IN THIS CASE RELATED TO FMNS (SIC) AS
7 FAR AS MICHIGAN IS CONCERNED, THERE ARE TWO LINES
8 THE PROVIDERS COMPLAINT ABOUT IT. THERE IS NO
9 ARGUMENT THAT OUR MFNS IN MICHIGAN IN ANY WAY TO
10 RESTRICT COMMERCE OR TO ALLOCATE TERRITORY
11 OUTSIDE OF MICHIGAN. SO IT'S A RELEVANCE --

12 THE COURT: THEY WERE BARRIERS TO
13 COMPETITION, THOUGH. THAT WAS ONE OF SEVERAL
14 THINGS THAT WERE BARRIERS TO COMPETITION.

15 MR. CAMPBELL: THEY SAY THAT, YOUR
16 HONOR, BUT THEY HAVE ALSO REQUESTED THAT IN THE
17 JANUARY REQUESTS, IN FACT, REQUEST NUMBER 68,
18 WHICH WE HAVE NOT HAD AN OPPORTUNITY TO RESPOND
19 TO. AND WE ARE GOING TO PRODUCE THOSE DOCUMENTS.
20 AND YOUR HONOR --

21 THE COURT: I UNDERSTAND THERE HAS BEEN
22 LOTS OF MEET AND CONFERS, MEET AND CONFERS, AND
23 DISCUSSIONS. BUT THOSE REQUESTS WENT OUT IN
24 JANUARY. WE ARE NOW IN SEPTEMBER, NINE MONTHS
25 LATER. I AM JUST NOT REALLY SYMPATHETIC TO THE

1 NOTION THAT YOU HAVEN'T HAD AN OPPORTUNITY TO
2 RESPOND TO THOSE REQUESTS FOR PRODUCTION. IT'S
3 BEEN NINE MONTHS.

4 MR. CAMPBELL: YOUR HONOR, I AM NOT
5 SAYING WE HAVEN'T RESPONDED. I THINK THE, WE ARE
6 BASICALLY GATHERING THOSE DOCUMENTS TO PRODUCE
7 NOW. BUT IT'S NOT A SHORTCUT TO REQUIRE US TO
8 START OVER IN MICHIGAN AND VIOLATE PROTECTIVE
9 ORDER TO TRY TO PULL THE SAME DOCUMENTS. I MEAN,
10 THE PROBLEM IS THOSE DOCUMENTS IN MICHIGAN,
11 LARGELY, MANY OF THEM ARE IRRELEVANT. FOR
12 EXAMPLE, THE EXPERT'S TESTIMONY.

13 AND I UNDERSTAND THE COURTS
14 FRUSTRATION, YOUR HONOR, AND WE ARE UNDER A
15 DEADLINE TO PRODUCE THOSE DOCUMENTS AND WE ARE
16 GATHERING THEM NOW. WE ARE SPENDING, MR. GOURLEY
17 CAN TELL YOU THIS, FULL TIME, PULLING THOSE
18 DOCUMENTS AND PRODUCING THEM.

19 BUT, YOUR HONOR, TO SHORTCUT THE RULES
20 AND SIMPLY SAY YOU GET A FILE WE JUST COMPLETED
21 WHEN IT DOESN'T INVOLVE THE ISSUES THAT ARE
22 INVOLVED IN THIS CASE IN TERMS OF BARRIER ENTRY,
23 JUDGE, THERE ARE SOME DOCUMENTS THERE THAT ARE
24 CLEARLY RELEVANT AND GOING TO BE PRODUCED IN THIS
25 CASE. BUT THAT DOESN'T SOLVE THE ISSUES WE HAVE

1 IN FRONT OF US TODAY DEALING WITH PRODUCING
2 LARGELY CONFIDENTIAL DOCUMENTS PROTECTED UNDER A
3 PROTECTIVE ORDER. FRANKLY, IF THERE IS A CONSENT
4 FROM THE THIRD PARTIES, IT'S NOT A PROBLEM. THE
5 BURDEN'S NOT ON US TO GET THAT UNDER THE LAW.
6 AND THEY REPRESENT THOSE PEOPLE. MANY OF THEM,
7 THOSE INSTITUTIONS IN THIS CASE, THE PROVIDER
8 HOSPITALS. THEIR LAWYERS ARE LAWYERS IN THOSE
9 CASES.

10 THE COURT: IF THEY WERE TO GO TO AETNA
11 AND VARIOUS OTHER THIRD PARTIES AND GET THOSE
12 PARTIES TO SIGN SOMETHING SAYING WE CONSENT TO
13 ALLOW BLUE CROSS MICHIGAN TO PRODUCE, SUBJECT TO
14 THE PROTECTIVE ORDER IN THE NORTHERN DISTRICT OF
15 ALABAMA, BECAUSE THERE IS A PROTECTIVE ORDER HERE
16 AS WELL --

17 MR. CAMPBELL: YES, SIR.

18 THE COURT: -- WE ALLOW BLUE CROSS OF
19 MICHIGAN TO PRODUCE THOSE DOCUMENTS TO THE
20 PLAINTIFF. THAT SOLVES YOUR, AT LEAST YOUR
21 PROTECTIVE ORDER PROBLEM?

22 MR. CAMPBELL: RIGHT.

23 THE COURT: MAYBE IT DOESN'T SOLVE THE
24 RELEVANT --

25 MR. CAMPBELL: DOESN'T SOLVE THE

1 RELEVANCE ISSUE. BUT THAT'S WHY I SAID AT THE
2 LAST HEARING, WE ARE PUTTING THE CART BEFORE THE
3 HORSE HERE, YOUR HONOR.

4 ONE, IF THE COURT IS FRUSTRATED ABOUT
5 THE SLOWNESS IN US RESPONDING, THE PROCESS WOULD
6 BE TO FILE A MOTION TO INTERVENE WHICH COVERS THE
7 WHOLE WATERFRONT WITH JUDGE HOOD, WHICH CAN BE
8 DONE TOMORROW OR THE NEXT DAY, AND SHE WOULD
9 PROBABLY EXTRADITE A HEARING ON IT. OR GO TO
10 THOSE THIRD PARTIES, MANY OF WHOM -- THEY KNOW
11 ALL OF THEM. AND, FRANKLY, BECAUSE THEY WERE IN
12 THE MICHIGAN CASE, BOTH THE AETNA CASE AND THE
13 SHANE CASE, OR, SECONDLY -- SECONDLY, GET THEIR
14 CONSENTS OR SUBPOENA THEM. THEY CAN SUBPOENA
15 THOSE THIRD PARTIES.

16 I MEAN, THIS IS NOT, THIS IS NOT A
17 DIFFICULT TASK FROM THE PLAINTIFFS, YOUR HONOR,
18 FROM THAT STANDPOINT. THEY CAN EITHER GET
19 CONSENT OR SUBPOENA THEM. THEY SAY THEY HAVE
20 CONSENT FROM AETNA. WE ARE GETTING CONFLICTING
21 SIGNALS FROM AETNA BUT NOBODY HAS SEEN ANYTHING
22 IN WRITING. BUT AS FAR AS BLUE CROSS DOCUMENTS,
23 YOUR HONOR, MANY OF THOSE, AND I WILL BE HONEST
24 WITH THE COURT, MANY OF THOSE ARE, THAT BLUE
25 CROSS DEEMS CONFIDENTIAL, ARE CORRESPONDENCE AND

1 AGREEMENTS WITH THE HOSPITALS, 132 HOSPITALS IN
2 MICHIGAN. THE HOSPITALS IN THAT CASE RAISED CANE
3 THROUGHOUT THAT CASE BECAUSE THEY DIDN'T WANT
4 THEIR PRICING AND THEIR RATES INFORMATION
5 DISCLOSED.

6 NOW THEIR OWN -- THEY WERE IN BLUE
7 CROSS'S PRELIMINARY EXHIBIT LIST IN THAT CASE AND
8 THEY WERE ON BLUE CROSS, TO SOME EXTENT, THE
9 DOCUMENTS BLUE CROSS PRESENTED. THE HOSPITALS
10 WERE AUDIBLY OPPOSED, YOUR HONOR. AND WE ARE
11 ASKING, FORGET CONSENT FROM THE HOSPITALS,
12 SUBPOENA FROM THE HOSPITALS, AND WE WILL COMPLY
13 TO THE EXTENT IT'S RELEVANT. AND WE TAKE A BROAD
14 VIEW OF RELEVANCY OF THE DOCUMENTS IN THIS CASE
15 THAT HAVE TO BE PRODUCED, YOUR HONOR, SUBJECT TO
16 THE PROTECTIVE ORDER.

17 THIS IS NOT GAMES PLAYING. THIS IS
18 FOLLOWING THE RULES. BUT WE CAN'T PALL MALL
19 DISREGARD THOSE PROTECTIVE ORDERS, YOUR HONOR,
20 WITHOUT BEING IN CONTEMPT OF THE COURT IN
21 MICHIGAN. THAT'S WHY EVERY COURT THAT ADDRESSES,
22 WITH THE EXCEPTION OF ABOUT TWO, INCLUDING THE
23 DISTRICT COURTS IN THIS DISTRICT, IN THIS
24 CIRCUIT, HAVE SAID FILE A MOTION TO INTERVENE
25 WITH JUDGE HOOD AND GET THOSE DOCUMENTS.

1 SO, I AM NOT HERE SAYING, YOUR HONOR,
2 THAT WE ARE GOING TO CONTINUE NOT PRODUCING. WE
3 ARE UNDER A DEADLINE OF JULY OF NEXT YEAR. I
4 WOULD SAY, AND MR. GOURLEY CAN SPEAK MORE OF
5 THIS, BUT WE ANTICIPATE PRODUCTION BEGINNING VERY
6 QUICKLY. AND WE ARE GOING TO RESPOND TO EACH ONE
7 OF THESE REQUESTS, YOUR HONOR, IN A TIMELY, IN A
8 RELEVANT FASHION, PRODUCING THOSE DOCUMENTS. BUT
9 TO GO OFF AND JUST REQUIRE PALL MALL THE
10 PRODUCTION OF THIS WHOLE FILE FROM MICHIGAN, WE
11 THINK, IS THE WRONG WAY TO APPROACH IT. IT PUTS
12 US IN A QUAGMIRE, YOUR HONOR.

13 IF YOU ORDER US TO PRODUCE THOSE
14 DOCUMENTS THAT ARE NOT COVERED BY PROTECTIVE
15 ORDER, IT WILL TAKE A WORLD OF TIME TO GO THROUGH
16 AND SIPHON THROUGH THERE AND FIND WHAT IS
17 CONFIDENTIAL, WHAT IS NOT CONFIDENTIAL. I MEAN,
18 THE EXPERT REPORTS, FOR EXAMPLE, ARE FULL OF
19 REFERENCE TO CONFIDENTIAL AND LOTS OF
20 CONFIDENTIAL INFORMATION. IT'S IMPOSSIBLE TO DO
21 WITHOUT DOUBLING OR TRIPLING OUR DISCOVERY BURDEN
22 IN THIS CASE.

23 AND FOR ALL THOSE REASONS, YOUR HONOR,
24 WE FEEL LIKE THE MOTION FOR PROTECTIVE ORDER
25 SHOULD BE GRANTED SUBJECT TO THE PLAINTIFF GOING

1 AND GETTING CONSENT OR SUBPOENAING THOSE THIRD
2 PARTIES, OR INTERVENING IN MICHIGAN. AND IN THE
3 MEANTIME, THE DOCUMENTS THEY SEEK IN THIS CASE,
4 YOUR HONOR, AS AN OFFICER OF THIS COURT, THEY
5 WILL GET, AND THEY WILL GET TIMELY, YOUR HONOR,
6 AND WE WILL COMPLY.

7 THE COURT: ALL RIGHT. ANYONE ELSE
8 WISH TO ADDRESS ANYTHING FROM THE MICHIGAN
9 STANDPOINT?

10 MR. STENERSON: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. THANK YOU.

12 MR. RAGSDALE: JUDGE, YOU KNOW THE LAST
13 THING THAT I WOULD EVER WANT TO DO WOULD BE TO
14 OFFEND MR. CAMPBELL OR ANY OF THE DEFENDANTS.
15 BUT THIS IS ABOUT FOOT DRAGGING. THIS IS ABOUT
16 NOT RESPONDING. THEIR RESPONSE IS THAT THEY WILL
17 RESPOND TO THOSE REQUESTS. I DIDN'T HEAR HIM SAY
18 THEY WILL PRODUCE ANY DOCUMENTS. AND THAT'S
19 WHERE WE REALLY ARE AT THIS POINT IS ARE THEY
20 GOING TO PRODUCE A SINGLE DOCUMENT TO US?
21 BECAUSE RIGHT NOW, AND I WANTED TO START WITH
22 THIS. I WANTED TO START WITH, JUDGE, WHY DON'T
23 WE JUST FOCUS ON WHAT THEY HAVE AGREED TO
24 PRODUCE?

25 WELL, IN RESPONSE TO THIS MOTION, TO

1 THIS REQUEST TO THE LETTERS THAT WE WROTE, THEY
2 HAVE NOT AGREED TO PRODUCE A SINGLE PAGE OF ANY
3 DOCUMENT IN THE AETNA LITIGATION. NONE OF THEM.
4 SO THERE IS NOTHING TO TALK ABOUT IN TERMS OF
5 WHAT THEY WOULD COMPLY ABOUT. THEY HAVE NOT EVEN
6 AGREED, JUDGE, AND I THINK THIS IS IMPORTANT,
7 THAT THEY WILL PRODUCE THOSE DOCUMENTS IN
8 RESPONSE TO THE REQUEST FOR PRODUCTION THAT HAVE
9 BEEN PENDING SINCE JANUARY. IN FACT, THEIR
10 POSITION, WHICH WAS REPEATED TODAY, IS THAT ALL
11 OF THOSE DOCUMENTS ARE IRRELEVANT AND THEREFORE
12 WOULDN'T BE PRODUCED IN RESPONSE TO OUR REQUEST
13 FOR PRODUCTION IF THEY STAND ON THEIR RELEVANCY
14 OBJECTION. WHICH MEANS EVEN IF WE GO THROUGH
15 THIS OTHER PROCESS AND WAIT UNTIL NEXT JULY, WE
16 STILL MAY NOT HAVE ANY OF THE DOCUMENTS THAT WE
17 ARE TALKING ABOUT AND THAT WE HAVE IDENTIFIED.

18 I THINK IT IS IMPORTANT TO FOCUS ON THE
19 FACT THAT THEY HAVEN'T EVEN AGREED, JUDGE, TO
20 PRODUCE DOCUMENTS TO WHICH THEY CAN'T POSSIBLY
21 HAVE AN OBJECTION. THEIR OWN DOCUMENTS IN THE
22 AETNA LITIGATION. THEIR LISTS THAT THEY
23 COMPILED, WHICH WE HAVE SEEN TODAY -- I GUESS THE
24 ADVANTAGE IS THIS IS THE MOST INFORMATION WE HAVE
25 GOTTEN OUT OF THEM SINCE WE START TALKING ABOUT

1 THIS -- DOESN'T TELL YOU HOW MANY OF THESE
2 DESIGNATED CONFIDENTIAL DOCUMENTS WERE DESIGNATED
3 CONFIDENTIAL BY BLUE CROSS. IF BLUE CROSS
4 DESIGNATED THEM AS CONFIDENTIAL, AND, FRANKLY, I
5 WOULD BE SURPRISED IF THEY DIDN'T DESIGNATE EVERY
6 DOCUMENT CONFIDENTIAL, BECAUSE THE DOCUMENTS THAT
7 WE HAVE HAD PRODUCED, THE SMALL AMOUNT WE HAVE
8 GOTTEN FROM THE ASSOCIATION IN THIS CASE, ALL OF
9 THEM HAVE BEEN DESIGNATED SUBJECT TO THE
10 PROTECTIVE ORDER. THAT'S STANDARD OPERATING
11 PROCEDURE FOR BLUE CROSS.

12 SO, AS A CONSEQUENCE, WE CAN'T TELL
13 FROM THIS LIST HOW MANY OF THE DOCUMENTS SUBJECT
14 TO THE PROTECTIVE ORDER ARE ONLY SUBJECT TO THE
15 PROTECTIVE ORDER BECAUSE OF THE ACTIONS OF BLUE
16 CROSS. IF BLUE CROSS DESIGNATES THEM AS SUBJECT
17 TO CONFIDENTIALITY REQUIREMENTS, WE DON'T NEED TO
18 GET ANYBODY'S WAIVER. THEY ARE THE PARTY THAT
19 HAS THAT WITHIN THEIR CONTROL AND THEY ARE STILL
20 SUBJECT TO THAT. SO, I WOULD ASSUME THEY CAN
21 TELL US HOW MANY OF THESE CONFIDENTIALITY
22 DESIGNATIONS WERE MADE BY AETNA OR MADE BY A
23 THIRD PARTY OR MADE SOLELY BY BLUE CROSS BECAUSE
24 IF THEY WERE MADE SOLELY BY BLUE CROSS, THE
25 PROTECTIVE ORDER ARGUMENT IS A RED HERRING. IT

1 IS A RUSE TO MAKE YOU NOT BE ABLE TO NOTICE THAT
2 IT IS THEM THAT IS STOPPING THOSE DOCUMENTS FROM
3 BEING PRODUCED.

4 IN ADDITION TO THAT, JUDGE -- AND LET
5 ME SAY THIS. I THINK THIS IS IMPORTANT. ALL OF
6 THESE DOCUMENTS ARE IN THE POSSESSION OF THE
7 ATTORNEYS. THOSE DOCUMENTS HAVE ALREADY BEEN
8 GATHERED, THEY HAVE ALREADY BEEN CLEANSED AND
9 LOOKED THROUGH IN TERMS OF PRIVILEGE, AND THEY
10 ARE IN THE HAND OF THE LAWYERS. THE LAWYERS HERE
11 TODAY AND SOME OTHERS THAT ARE IN THIS CASE.
12 THEY ARE NOT SITTING BACK AT BLUE CROSS. THEY
13 DON'T HAVE TO BE GATHERED AGAIN FROM THE CLIENT.
14 THEY ARE ALREADY IN THE POSSESSION OF LAWYERS IN
15 THIS CASE. THEY DIDN'T GIVE THOSE FILES BACK AND
16 THEY CERTAINLY DIDN'T SHRED THEM AFTER THE AETNA
17 LITIGATION. THEY STILL HAVE THEM IN THEIR
18 OFFICES, PROBABLY ON THEIR COMPUTERS. THERE IS
19 NO ADDITIONAL BURDEN TO GATHERING THOSE DOCUMENTS
20 BECAUSE THEY HAVE ALREADY BEEN GATHERED AND THEY
21 HAVE ALREADY BEEN COLLECTED BY THESE ATTORNEYS.

22 IN ADDITION TO THOSE, A SUBSTANTIAL
23 NUMBER OF THEM HAVE ALREADY BEEN DESIGNATED ON
24 THE PRELIMINARY EXHIBIT LIST. AT A MINIMUM,
25 JUDGE, IT SEEMS TO ME, THEY OUGHT TO BE ABLE TO,

1 AND OUGHT TO BE REQUIRED TO PROVIDE US THAT
2 PRELIMINARY EXHIBIT LIST WHICH THEY USED FOR
3 PUTTING TOGETHER THIS CHART. BUT WE HAVE NOT
4 EVEN SEEN THE EXHIBIT LIST.

5 THE COURT: THE LIST AS DISTINCT FROM
6 THE UNDERLYING DOCUMENTS THEMSELVES?

7 MR. RAGSDALE: CORRECT, YES.

8 THE COURT: SURE.

9 MR. RAGSDALE: AT A MINIMUM, IT SEEMS
10 TO ME, WE OUGHT TO BE ABLE TO HAVE THAT AND BE
11 ABLE TO MAKE THE ARGUMENTS. BECAUSE WE ARE,
12 DESPITE THE ARGUMENT MR. CAMPBELL MADE THAT THE
13 LAWYERS IN THIS CASE ARE THE SAME LAWYERS IN THE
14 AETNA CASE, THAT'S NOT TRUE. NO PROVIDER
15 COUNSEL, FOR EXAMPLE, WAS IN THAT AETNA CASE.

16 AND IN ADDITION, CERTAINLY THERE WERE
17 SOME LAWYERS INVOLVED IN THAT CASE BUT THEY ARE
18 NOT CERTAINLY THE LEAD COUNSEL AND NOT DISCOVERY
19 COUNSEL IN THIS CASE. BUT WE DO KNOW THAT THE
20 LAWYERS IN THAT CASE THAT REPRESENTED BLUE CROSS
21 ARE THE SAME LAWYERS IN THIS CASE, THE LAWYERS
22 THAT HAVE POSSESSION OF THOSE DOCUMENTS.

23 THE COURT: THE HOSPITALS IN THE
24 MICHIGAN CASE, SURELY, SOME OR PERHAPS ALL OF
25 THOSE ARE THE SAME HOSPITALS THAT ARE PROVIDERS,

1 THAT ARE PART OF THE PROVIDERS CLASS IN THIS
2 LITIGATION THOUGH, AREN'T THEY?

3 MR. RAGSDALE: CERTAINLY, THEY ARE
4 UNNAMED CLASS MEMBERS.

5 THE COURT: YEAH.

6 MR. RAGSDALE: I THINK THAT IS
7 ABSOLUTELY TRUE. SO, AGAIN, YOU ARE TALKING
8 ABOUT PROVIDER COUNSEL BEING THEIR LAWYERS IN
9 THIS CASE --

10 THE COURT: BUT BEING UNNAMED, THAT IS
11 A FAR CRY FROM SAYING THERE IS ALREADY AN
12 ATTORNEY WITH AN ESTABLISHED CLIENT RELATIONSHIP.
13 SOME OF THESE HOSPITALS MAY NOT ACTUALLY HAVE ANY
14 CONTACT WITH THE LAWYERS IN THIS CASE, SO FAR.

15 MR. RAGSDALE: I WOULD THINK THE VAST
16 MAJORITY OF THEM DON'T HAVE ANY CONTACT WITH
17 COUNSEL IN THIS CASE SO FAR.

18 IN ADDITION TO THAT, JUDGE, THE FACT
19 THEY HAVE NOT EVEN BEEN WILLING TO PRODUCE
20 DOCUMENTS THAT THEY ARE THE ONLY ONES DESIGNATED
21 THEM AS CONFIDENTIAL, AND I SUSPECT THERE ARE
22 SUBSTANTIAL NUMBERS OF THOSE THAT HAVEN'T
23 DISCLOSED THAT TO US.

24 IN ADDITION, THEY HAVE NOT AGREED TO
25 PRODUCE DEPOSITION TRANSCRIPTS AT ALL. EVEN ONES

1 OF THEIR WITNESSES. EVEN DEPOSITIONS THAT WERE
2 TAKEN THAT WERE ONLY DESIGNATED AS CONFIDENTIAL
3 BY BLUE CROSS. AGAIN, THERE IS NO THIRD PARTY
4 THAT HAS TO BE CONSULTED ABOUT THAT. IF BLUE
5 CROSS'S EMPLOYEE OR REPRESENTATIVE GOT DEPOSED
6 AND BLUE CROSS SAID I WANT TO DESIGNATE THAT
7 CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER, AND I
8 WOULD BE AMAZED IF THEY DIDN'T DO THAT --

9 THE COURT: COULDN'T IT ALSO BE A
10 SITUATION, THOUGH, THAT YOU MAY HAVE A BLUE CROSS
11 WITNESS WHO IS BEING DEPOSED AND SOMEBODY SAYS
12 TAKE A LOOK AT THIS DOCUMENT, MR. WITNESS. AND
13 THAT DOCUMENT THAT HE IS LOOKING AT WAS
14 DESIGNATED CONFIDENTIAL BY SOME OTHER THIRD
15 PARTY?

16 MR. RAGSDALE: CERTAINLY, THAT IS
17 POSSIBLE. AND IT SEEMS TO ME THAT THAT COULD BE
18 DEALT WITH IN ONE OF TWO WAYS. ONE IS BY -- AND
19 AT THIS POINT, IT SEEMS TO ME, AND I AM
20 SEPARATING THE DEPOSITION TRANSCRIPTS FROM THE
21 DEPOSITION EXHIBITS.

22 THE COURT: ALL RIGHT.

23 MR. RAGSDALE: THE DEPOSITION
24 TRANSCRIPT IS NOT CONFIDENTIAL. NOW, IF HE IS
25 DISCUSSING THE CONTENTS OF A CONFIDENTIAL

1 DOCUMENT, THAT'S EASY ENOUGH TO REDACT THAT OUT
2 UNTIL WE HAVE AN OPPORTUNITY TO FIND OUT WHAT WE
3 ARE TALKING ABOUT. SO THERE IS SOME PORTION,
4 FRANKLY, THE VAST MAJORITY OF THE DOCUMENT OR THE
5 DEPOSITION TRANSCRIPTS ARE NOT GOING TO BE THAT
6 KIND OF DISCUSSION, BUT THEY HAVE REFUSED TO EVEN
7 PROVIDE ONE PAGE.

8 THE COURT: BUT IT WOULD TAKE THEM
9 THEN, EVEN IF I SAID PRODUCE ALL THE DEPOSITION
10 TRANSCRIPTS, BLUE CROSS MICHIGAN WOULD STILL HAVE
11 TO GO THROUGH ALL THOSE TRANSCRIPTS TO TRY TO
12 LOCATE ANY INSTANCE WHERE A CONFIDENTIAL DOCUMENT
13 WAS DISCUSSED WHERE THAT CONFIDENTIAL DOCUMENT
14 WAS DESIGNATED BY SOME THIRD PARTY.

15 I THINK I TEND TO AGREE WITH YOU THAT
16 TO THE EXTENT BLUE CROSS SAYS THIS IS A
17 CONFIDENTIAL DOCUMENT, WE WANT TO IT PROTECTED,
18 THAT WOULD NOT IMPLICATE THE PROTECTIVE ORDER IN
19 MICHIGAN BECAUSE THOSE SAME DOCUMENTS ARE SUBJECT
20 TO PROTECTIVE ORDER HERE. BUT YOU STILL RUN INTO
21 THE PROBLEM OF THIS SORT OF BOUILLABAISSE OF
22 INFORMATION THAT'S MADE UP OF CONFIDENTIAL
23 INFORMATION FROM LOTS OF DIFFERENT SOURCES.

24 MR. RAGSDALE: I AGREE, JUDGE. BUT
25 KEEP IN MIND, WE HAVE THE PEOPLE THAT KNOW THAT

1 ALREADY IN THIS CASE. THOSE LAWYERS KNOW WHO
2 DESIGNATED DOCUMENTS CONFIDENTIAL. THEY KNOW
3 WHETHER OR NOT THEY DESIGNATED IT AS
4 CONFIDENTIAL. SO, FROM THAT STANDPOINT, IT'S,
5 FRANKLY, MUCH EASIER FOR THEM TO DO THAT THAN
6 ANYBODY ELSE. THEY HAVE THE PEOPLE INVOLVED IN
7 THAT.

8 I WOULD ALSO SUGGEST TO YOU, JUDGE,
9 THAT TO THE EXTENT THEY CAN IDENTIFY FOR US --
10 RIGHT NOW, WE DON'T EVEN KNOW WHO THE THIRD
11 PARTIES ARE THAT THEY ARE PURPORTEDLY STANDING IN
12 FOR. IN OTHER WORDS, WHO ARE THEY TRYING TO
13 PROTECT? AETNA --

14 THE COURT: MR. CAMPBELL SUGGESTS IT'S
15 A BUNCH OF HOSPITALS, THAT THE HOSPITALS
16 UNALTERABLY ARE OPPOSED TO HAVING THEIR RATE
17 STRUCTURES RELEASED.

18 MR. RAGSDALE: I NOTICED THAT I HAVE
19 NOT SEEN ANY EVIDENCE OF THAT. AND ALTHOUGH I
20 WOULD ALWAYS TAKE ANDY'S WORD ON ANYTHING, IT
21 SEEMS TO ME THERE IS SOME OBLIGATION FOR THEM TO
22 SUGGEST IT'S MORE THAN JUST THEM THAT ARE
23 OBJECTING TO THE PRODUCTION OF THESE DOCUMENTS.
24 I THINK, FOR EXAMPLE, THIS COURT COULD CONSIDER
25 AND CREATE A STRUCTURE WHEREBY A SHOW CAUSE ORDER

1 WAS ISSUED BY THIS COURT THAT BASICALLY SETS OUT
2 THE LIST OF DOCUMENTS WITHIN OUR MUCH-NARROWED
3 REQUEST, AND WITHIN THE NARROWED REQUEST THAT THE
4 COURT HAS THAT THESE WILL BE PRODUCED BY BLUE
5 CROSS WITHIN X-NUMBER OF DAYS UNLESS ANY THIRD
6 PARTY WANTS TO OBJECT TO THAT. THAT THEN PUTS
7 THE ONUS ON THOSE THIRD PARTIES TO BE ABLE TO
8 SAY, YES, WE DO STAND AND OBJECT TO THAT. WE CAN
9 SIMPLIFY TO PROCESS WHERE THEY DON'T HAVE TO COME
10 DOWN HERE AND APPEAR IN COURT DOWN HERE, BUT IT
11 WOULD PROVIDE A DEADLINE BY WHICH ANY THIRD PARTY
12 WHO HAD A REAL OBJECTION, NOT JUST BLUE CROSS
13 USING THAT AS AN EXCUSE, WOULD HAVE AN
14 OPPORTUNITY TO TELL THIS COURT, YEAH, WE DON'T
15 WANT OUR DOCUMENTS PRODUCED.

16 THE COURT: WELL, WE HAVE TO ARRANGE
17 SOME KIND OF WAY OF GIVING NOTICE TO ALL THOSE
18 THIRD PARTIES, AND ASK THE QUESTION DO WE KNOW
19 WHO ALL THE THIRD PARTIES ARE?

20 MR. RAGSDALE: WELL, THEY DO. BLUE
21 CROSS DOES. THAT'S ONE OF THE THINGS, JUDGE,
22 THAT WE ALSO THINK THAT WE ASKED FOR AND NOT BEEN
23 PROVIDED WITH, I GIVE US A LIST OF WHO WE ARE
24 SUPPOSED TO TALK TO.

25 NOW, THEY MAKE THE ARGUMENT THAT'S NOT

1 THEIR BURDEN, IT'S NOT THEIR BURDEN TO GO GET A
2 WAIVER FROM THOSE PEOPLE. I, FRANKLY, EVEN AGREE
3 WITH THAT. BUT WE WILL BE HAPPY TO DO THAT IF
4 THEY WILL TELL US WHO THEY ARE. AT THIS POINT,
5 THEY ARE UNNAMED SOURCES WHO MAY OR MAY NOT
6 OBJECT. BUT AT THIS POINT, WE DON'T EVEN KNOW
7 WHETHER OR NOT THERE ARE A SIGNIFICANT NUMBER OF
8 THESE DOCUMENTS THAT WERE DESIGNATED CONFIDENTIAL
9 BY ANYBODY OTHER THAN BLUE CROSS. AT A MINIMUM,
10 I THINK WE SHOULD BE ALLOWED TO HAVE ANY
11 DOCUMENTS DESIGNATED CONFIDENTIAL SOLELY BY BLUE
12 CROSS, AND AN IDENTIFICATION OF, WITH THIS
13 PRELIMINARY EXHIBIT LIST, FOR EXAMPLE, THAT
14 SHOULD BE GIVEN TO US, A DESIGNATION OF WHO
15 DESIGNATED ANY OF THOSE EXHIBITS SUBJECT TO THE
16 PROTECTIVE ORDER, AND WE'LL SECURE THOSE WAIVERS.
17 WE FRANKLY THINK THAT WOULD BE SIMPLE TO DO.
18 TALKING TO AETNA WAS SIMPLE ENOUGH TO DO IN TERMS
19 OF THEIR SPECIFIC EXHIBITS AND THEY WANT SOME
20 CONTROL ON INPUT. BUT KEEP IN MIND, I THINK, AS
21 THIS COURT HAS ALREADY RECOGNIZED, ANYTHING
22 THAT'S PRODUCED IN THIS CASE IS SUBJECT TO OUR
23 PROTECTIVE ORDER. SO IT'S NOT GOING ANY FURTHER
24 THAN JUST COUNSEL'S EYES IN THIS CASE EVEN IF
25 IT'S PRODUCED. IF THERE A FURTHER DISCUSSIONS TO

1 HAVE WITH THESE THIRD PARTIES, WE WELCOME THE
2 OPPORTUNITY TO DO THAT, BUT IT'S VERY HARD TO DO
3 WHEN WE DON'T KNOW WHO THEY ARE.

4 IN ADDITION, JUDGE, I WOULD SAY IN
5 TERMS OF THE EXPERT REPORT, THE SAME ANALYSIS
6 APPLIES. THEY HAVE NOT EVEN IDENTIFIED FOR US
7 WHO THE EXPERTS THAT WERE GIVEN REPORTS, WHETHER
8 OR NOT THOSE REPORTS CONTAINED CONFIDENTIAL
9 INFORMATION. AND, AGAIN, IF THEY WERE DESIGNATED
10 CONFIDENTIAL SOLELY BY BLUE CROSS, THERE ARE NO
11 GROUNDS TO WITHHOLD THE PRODUCTION OF THAT. BUT
12 MICHIGAN'S TAKING THE POSITION WE GET NOTHING OUT
13 OF THAT CASE. AND THAT'S COMBINED WITH THEIR
14 PROMISE THAT THEY WILL RESPOND, HOPEFULLY BY NEXT
15 JULY, TO THE REQUEST FOR PRODUCTION THAT ASKS FOR
16 THESE VERY SAME DOCUMENTS. NOT THAT THEY WILL
17 PRODUCE THEM, BUT THEY WILL RESPOND TO THOSE
18 REQUESTS. THAT IS WHY WE SAW THIS AS A WAY IN
19 WHICH TO AT LEAST GO THROUGH THE PROCESS OF
20 DOCUMENTS THAT HAVE ALREADY BEEN GATHERED, THAT
21 HAD ALREADY BEEN ACCUMULATED, THAT HAD ALREADY
22 BEEN REVIEWED FOR PRIVILEGE. IN MOST CASES, HAD
23 ALREADY BEEN MARKED AS EXHIBITS TO BE PLACED INTO
24 TRIAL, AND THAT ARE ALREADY IN THE POSSESSION OF
25 THE LAWYERS IN THIS CASE. AND THAT IS THE SUBSET

1 OF DOCUMENTS THAT WE HAVE REQUESTED HERE.

2 BUT, JUDGE, I DO THINK THIS CHART
3 DOESN'T -- IS NOT HELPFUL. IT DOES INVOLVE A LOT
4 OF PAGES. GUESS WHAT? EVERYTHING IN THIS CASE
5 INVOLVES A LOT OF PAGES. THERE ARE A LOT OF
6 DOCUMENTS TO BE REACHED. AND THE FACT WE MAY
7 MAKE SUPPLEMENTAL REQUESTS AFTER WE GET THESE
8 DOCUMENTS DOESN'T MEAN THOSE DOCUMENTS ARE NOT
9 DISCOVERABLE.

10 THE COURT: ALL RIGHT. THANK YOU.
11 MR. CAMPBELL?

12 MR. CAMPBELL: FIRST OF ALL, YOUR
13 HONOR, SPEAKING TO THE REQUESTS IN THIS CASE,
14 YOUR HONOR, WE ARE GOING TO PRODUCE MILLIONS OF
15 DOCUMENTS IN THIS CASE. TO SAY THAT WE HAVE NOT
16 AGREED TO DO THAT, TO SAY WE ARE FIGHTING THAT,
17 WHAT, AS I UNDERSTAND IT, SEARCH TERMS ARE BEING
18 NEGOTIATED NOW. THE PROCESS IS ONGOING, IS GOING
19 TO BE COMPLETED, AND THEY ARE GOING TO BE
20 PRODUCED. A DEADLINE FOR PRODUCTION IS NEXT
21 JULY. THIS COURT HAS SET THOSE STANDARDS.

22 BUT THE PLAINTIFF IS SAYING, ADD TO
23 THAT BURDEN. GO THROUGH ALL THESE DOCUMENTS IN
24 MICHIGAN WITHOUT ANY COUNTER VEILING OFFER OF
25 CUTTING DOWN OUR BURDEN IN THIS CASE, GO THROUGH

1 THOSE DOCUMENTS IN MICHIGAN -- FOR EXAMPLE, THE
2 DEPOSITIONS -- AND TELL US THE ONES THAT ARE
3 DESIGNATED BY WHOM AND PRODUCE THE ONES -- THE
4 PROBLEM WITH THAT, YOUR HONOR, IF YOU LOOK AT IT,
5 THE DEPOSITION TRANSCRIPTS ARE 211. THEY
6 CONTAINED THOUSANDS OF PAGES OF CONFIDENTIAL
7 MATERIAL PROTECTED BY THE PROTECTIVE ORDERS.
8 BLUE CROSSES, AETNA'S, AND THIRD PARTIES.
9 EXHIBITS ARE ATTACHED THAT WERE THEN, QUESTIONS
10 WERE ASKED ABOUT. WHAT BARRY'S SOLUTION IS, MAKE
11 US GO THROUGH THAT AND SPEND HUNDREDS OF HOURS
12 DOING THAT AND THEN PRODUCE SOME LIMITED PORTION
13 OF IT. AND, YOUR HONOR, THAT VIOLATES THE
14 DISCOVERY RULES. THAT'S OVER BURDENSOME WHEN
15 THEY ARE GOING TO GET THE SAME RESPONSIVE
16 MATERIAL HERE. THEY HAVE ASKED FOR A SPECIFIC
17 REQUEST, DEPOSITION TRANSCRIPTS TO GO WITH THESE
18 VARIOUS ISSUES --

19 THE COURT: BUT YOU ARE GOING TO STILL
20 HAVE SAME PROTECTIVE ORDER PROBLEM EVEN IF I
21 AGREE WITH YOU AND WE WAIT AND, SAY, ALL RIGHT,
22 PRODUCE THOSE DOCUMENTS NEXT JULY. YOU ARE STILL
23 GOING TO HAVE THE SAME PROTECTIVE ORDER PROBLEMS,
24 AREN'T YOU?

25 MR. CAMPBELL: YOUR HONOR, THE ISSUE

1 IS, ON THE PROTECTIVE ORDER ENTERED IN MICHIGAN,
2 YES, THAT ISSUE EXISTS AND THAT DOESN'T SIMPLY
3 BELONG TO US. THAT BELONGS TO THESE THIRD
4 PARTIES.

5 THE COURT: I GUESS THAT'S WHAT I AM
6 TRYING TO FIGURE OUT IS INsofar AS THE BURDEN OF
7 TRYING TO ISOLATE THAT WHICH IS SUBJECT TO THE
8 PROTECTIVE ORDER IN MICHIGAN FROM THAT WHICH IS
9 NOT AND PRODUCING WHAT'S NOT PROTECTED, THAT
10 BURDEN IS GOING TO EXIST WHETHER IT'S TODAY OR
11 WHETHER IT'S A YEAR FROM NOW.

12 MR. CAMPBELL: I DON'T BELIEVE IT
13 WILL, YOUR HONOR. AND THE REASON -- TWO THINGS.
14 RATHER THAN GOING THROUGH A PROCEDURE SAYING GIVE
15 US THE NAMES OF THE THIRD PARTIES AND THEN GIVE
16 SOME NOTICE FROM THE COURT, THE COURTS THROUGHOUT
17 THE COUNTRY HAVE RECOGNIZED THE APPROPRIATE
18 VEHICLE IS TO FILE A RULE 24 MOTION WITH JUDGE
19 HOOD, SAYING RELEASE THEM ALL, JUDGE, THE CASE IS
20 OVER. AND I HAVE SEEN THAT HAPPEN AS IN JUDGE
21 PRYOR'S CASE WE HAD IN FLORIDA AND THE JUDGE DID
22 THAT, TO A LARGE EXTENT.

23 BUT IN THIS PARTICULAR CASE, YOUR
24 HONOR, WE ARE BASICALLY DEALING WITH A SITUATION
25 WHERE IF WE RESPOND AND PRODUCE IT IN ALABAMA, WE

1 DO IT ONE TIME IN RESPONSE TO THOSE REQUESTS.
2 AND, YOUR HONOR, THE PROTECTIVE ORDER ISSUE WILL
3 HAVE TO BE DECIDED, FRANKLY. I THINK IT'S WITHIN
4 THE JURISDICTION OF THE MICHIGAN JUDGE, AND I
5 DON'T THINK YOU CAN CARVE OUT A WAY TO GO AROUND
6 THAT IN THIS COURT. I THINK THAT'S FROWNED UPON
7 THROUGHOUT THE COUNTRY AND MOST OF THE COURTS SAY
8 YOU CAN'T DO THAT.

9 BUT THE STATEMENT BARRY SAYS, THAT HE
10 KEEPS SAYING IS INCORRECT. THEY HAVE THE LIST
11 ALREADY. THE PLAINTIFF'S COUNSEL, THE GUSTAVSON
12 FIRM, WHO IS IN THIS CASE, THEY KNOW ALL OF THOSE
13 NON-PARTIES. THEY NEGOTIATE THIS SETTLEMENT IN
14 THE SHANE CASE. ACCORDING TO TODD STENERSON, MY
15 CO-COUNSEL, THEY HAVE ALL THE DOCUMENTS. THAT'S
16 WHY THIS IS SOMEWHAT OF AN ELABORATE GAME, YOUR
17 HONOR. THEY DON'T NEED A LIST -- THEY HAVE GOT
18 THE LIST.

19 THE COURT: YOU ARE SAYING THAT ONE OF
20 THE PLAINTIFF'S COUNSEL FIRM IS IN THIS CASE, IN
21 THE BLUE CROSS BLUE SHIELD MULTIDISTRICT
22 LITIGATION CASE ALREADY HAS ALL THESE DOCUMENTS?

23 MR. STENERSON: YES, YOUR HONOR. TODD
24 STENERSON. THE GUSTAVSON FIRM WAS CO-LEAD
25 COUNSEL. THERE ARE THREE CASES IN MICHIGAN, THE

1 GOVERNMENT CASE, THE CUSTOMER CLASS ACTION, AND
2 THE AETNA CASE. ALL THE CASES, DISCOVERY WAS
3 CONSOLIDATED. THE GUSTAVSON FIRM, MR. HEADLEY
4 AND MR. GUSTAVSON WERE IN THAT CASE, LEAD
5 COUNSEL, NEGOTIATED THE SETTLEMENT, ATTENDED
6 DEPOSITIONS. THEY HAVE ALL THE DOCUMENTS. THEY
7 SERVED SUBPOENAS. THEY ATTENDED DEPOSITIONS,
8 THEY ASKED QUESTIONS IN THE DEPOSITIONS.

9 THE COURT: YOU ARE TELLING ME THAT --
10 LET'S ASSUME THAT I AGREE WITH MR. RAGSDALE AND I
11 AM GOING TO SAY PRODUCE THIS WHOLE BODY OF
12 DOCUMENTS, THAT THAT WOULD BE ESSENTIALLY
13 DUPLICATIVE OF SOMETHING THAT THIS PLAINTIFF'S
14 FIRM ALREADY HAS?

15 MR. STENERSON: YES, SIR.

16 THE COURT: OKAY.

17 MR. CAMPBELL: TO THE EXTENT THEY
18 ATTENDED DEPOSITIONS AND GOT TRANSCRIPTS, AND
19 THEY SUBPOENAED SOME OF THESE SAME NON- PARTIES.

20 MR. STENERSON: AGAIN, I WOULD THINK
21 THEY CAN USE THOSE DOCUMENTS --

22 MR. CAMPBELL: THE POINT, YOUR HONOR,
23 THEY KNOW THE THIRD PARTIES -- THEY KNOW THE
24 THIRD PARTIES, YOUR HONOR, AND THEY CAN GET
25 CONSENT OR THEY CAN SUBPOENA THEM. AND I DON'T

1 THINK THEY ARE DENYING THAT.

2 THE COURT: A MIRAGE. JUST A MIRAGE.

3 MR. CAMPBELL: YOUR HONOR, IN CLOSING,
4 I WOULD JUST MAKE TWO POINTS. THE DOCUMENTS THEY
5 SEEK FROM BLUE CROSS ALONE ARE SEVEN MILLION
6 DOCUMENTS IN THE AETNA CASE, THE THREE
7 CONSOLIDATED CASES. IN THOSE, MANY OF THESE
8 DOCUMENTS, AND THE SUGGESTION IS THOSE ARE JUST
9 YOUR INTERNAL DOCUMENTS -- NO. MANY OF THOSE
10 DOCUMENTS ARE COMMUNICATIONS WITH HOSPITALS. AND
11 WHEN THE SHANE PLAINTIFFS AND OTHER NON-PARTIES
12 TRIED TO INTERVENE AND GET THOSE DOCUMENTS, MOST
13 OF THE HOSPITALS OBJECTED. THEY HAVE A STAKE IN
14 THOSE. THEY DID NOT WANT THEIR CONFIDENTIAL
15 PRICING AND RATE INFORMATION DISCLOSED.

16 THE COURT: WELL, I GUESS TELL ME IF I
17 AM WRONG HERE, BECAUSE, AGAIN, I AM MORE IN THE
18 DARK ABOUT THIS THAN ANY OF YOU.

19 MR. CAMPBELL: I KNOW.

20 THE COURT: BUT SURELY THERE IS A BODY
21 OF THESE DOCUMENTS THAT ARE ENTIRELY IN THE
22 POSSESSION OF BLUE CROSS BLUE SHIELD OF MICHIGAN.
23 THEY ARE CREATED, THEY WERE INTERNAL DOCUMENTS.
24 THE ONLY PARTY THAT WANTED TO DESIGNATE THEM OR
25 HAD THE RIGHT TO DESIGNATE THEM AS CONFIDENTIAL

1 WOULD JUST BE BLUE CROSS MICHIGAN, RIGHT?

2 MR. CAMPBELL: THERE WOULD BE SOME,
3 YES, SIR. MR. GOURLEY CAN SPEAK TO THAT.

4 MR. GOURLEY: GOOD MORNING, YOUR HONOR.

5 THE COURT: GOOD MORNING.

6 MR. GOURLEY: THERE IS A PROCESS IN
7 PLACE WHEREBY WE ARE NEGOTIATING WITH PLAINTIFFS
8 THROUGH MEET AND CONFER PROCESS. THERE IS A
9 SEARCH METHODOLOGY PROTOCOL IN PLACE, LIKE A
10 45-DAY WINDOW IN WHICH TO AGREE TO SEARCH TERMS
11 OR TECHNOLOGY ASSISTED REVIEW OR HOWEVER WE ARE
12 GOING TO APPROACH THE MOST EFFICIENT WAY OF
13 FINING THE DOCUMENTS. GOING THROUGH THAT WITH
14 PRODUCTION CUSTODIANS AND SO FORTH. SO, ANYTHING
15 THAT WAS -- IF THERE IS ANYTHING FROM THE AETNA
16 CASE THAT WAS MARKED EXCLUSIVELY BY BLUE CROSS OF
17 MICHIGAN THAT MIGHT BE RELEVANT TO ONE OF THEIR
18 REQUESTS, THAT WILL BE IDENTIFIED BY A CUSTODIAN,
19 BY A SEARCH TERM, BY A WHATEVER THROUGH THE
20 NORMAL PROCESS --

21 THE COURT: BUT MR. RAGSDALE SAYS BUT
22 FOR THIS MICHIGAN LITIGATION, HE SAYS THAT YOU
23 ALREADY HAVE THIS BODY OF DOCUMENTS PULLED ASIDE,
24 SEGREGATED, REVIEWED FOR PRIVILEGE, AND IT'S
25 SITTING THERE IN THE LAWYERS' OFFICES.

1 MR. GOURLEY: WE HAVE A SET OF SEVEN
2 MILLION DOCUMENTS THAT ARE WITHOUT ANY
3 JUSTIFICATION OF RELEVANCE PLAINTIFFS WANT US TO
4 TURN OVER. NOW --

5 THE COURT: AND AGAIN, HERE, EVERYBODY
6 KEEPS FLIPPING AND FLOPPING BACK BETWEEN
7 RELEVANCE AND BURDENSOMENESS. LET'S DEAL WITH
8 BURDENSOMENESS FIRST.

9 IF THE DOCUMENTS HAVE BEEN SEGREGATED,
10 REVIEWED, AND ARE ALREADY SITTING THERE
11 SOMEWHERE, WHAT'S THE BURDEN?

12 MR. GOURLEY: THAT GOES TO WHAT
13 MR. CAMPBELL WAS SPEAKING TO IN THAT THERE IS
14 STILL WITHIN THAT SEVEN MILLION PAGES OF
15 DOCUMENTS CERTAIN INFORMATION THAT INCLUDES
16 CORRESPONDENCE WITH HOSPITALS OR OTHER THIRD
17 PARTIES THAT WOULD BE --

18 THE COURT: AND TO THE EXTENT SOME OF
19 THOSE THIRD PARTIES CONTINUE TO INSIST ON A
20 PROTECTIVE ORDER IN MICHIGAN, YOUR GOING TO HAVE
21 TO PROTECT THAT SOME SORT OF WAY, YOU ARE GOING
22 TO HAVE TO REDACT IT OR DO SOMETHING. I SEE THAT
23 POINT.

24 MR. CAMPBELL: IF YOU'RE ASKING US IF
25 THERE ARE SOME INTERNAL DOCUMENTS IN THAT SEVEN

1 MILLION THAT ONLY BLUE CROSS WOULD BE CONCERNED
2 ABOUT, YES, YOUR HONOR, THERE ARE. BUT WE
3 HAVEN'T GONE THROUGH THEM, MAN AND WOMAN HOURS,
4 TO TRY TO SEGREGATE ALL THAT BECAUSE WE INTENDED
5 TO RESPOND AND PRODUCE THOSE THAT WERE RELEVANT
6 IN THIS CASE?

7 THE COURT: SEGREGATE THEM APART FROM
8 THE DOCUMENTS THAT MIGHT INCLUDE INFORMATION FROM
9 A THIRD PARTY?

10 MR. CAMPBELL: YES, SIR. ARE TALKING
11 ABOUT SEVEN MILLION DOCUMENTS. AND I WOULD DARE
12 SAY, SEVERAL MILLION OF THEM IMPLICATE THE
13 INTEREST OF PROPRIETARY INFORMATION ON PRICING
14 AND RATES WITH HOSPITALS THAT THE HOSPITALS IN
15 THE CASES CONSOLIDATED CASES IN MICHIGAN MOVED
16 INTO COURT TO TRY TO STOP ANYBODY FROM GETTING
17 ACCESS TO. ONE HOSPITAL IN ANN ARBOR DOESN'T
18 WANT TO KNOW, DOESN'T WANT ANYONE TO KNOW THAT'S
19 COMPETING WITH IT, HOSPITAL-WISE, WHAT THEY ARE
20 GETTING. THEY DON'T WANT BLUE CROSS TO KNOW OR
21 AETNA TO KNOW WHAT BLUE CROSS IS CHARGING. AND
22 THEY HAVE AN INTEREST IN THOSE DOCUMENTS.

23 CAN WE SEGREGATE SOLELY INTERNAL
24 DOCUMENTS? PROBABLY, YOUR HONOR. IF YOU INSIST
25 ON US DOING IT. BUT WE ARE DOUBLING THE BURDEN

1 BECAUSE WE ARE GOING TO PRODUCE THEM IN THIS CASE
2 TO THE EXTENT THEY ARE RELEVANT. AND I WOULD
3 DARE SAY, A GOOD MANY OF THEM ARE, YOUR HONOR.

4 THE COURT: I GUESS THAT GETS BACK TO
5 THE EARLIER QUESTION I ASKED. IF YOU DO IT NOW,
6 WHY DO YOU HAVE TO REDO IT A YEAR FROM NOW?

7 MR. GOURLEY: BECAUSE OF THE TIME
8 PERIOD ISSUES IN THE CASE. SO, WE ARE STILL
9 NEGOTIATING SCOPE, STILL NEGOTIATING TIME PERIOD.
10 THEY ARE ASKING FOR THINGS THAT GO WAY BACK.
11 THIS CASE DOESN'T GO BACK TO THE 50S. WE ARE
12 GOING TO RENEGOTIATE CUSTODIANS, WE ARE GOING TO
13 RENEGOTIATE SEARCH TERMS, WE ARE GOING TO
14 RENEGOTIATE TIME FRAMES. WE ARE GOING TO DO
15 EVERYTHING SIX TIMES.

16 THERE IS A PROCESS IN PLACE WHEREBY WE
17 CAN IDENTIFY THE CUSTODIANS, IDENTIFY SEARCH
18 TERMS THAT BOTH PARTIES AGREE ON THAT WILL LEAD
19 TO THE DISCOVERY OF THE DOCUMENTS THEY WANT.

20 THE COURT: AND I UNDERSTAND THAT, I
21 UNDERSTAND THERE IS A PROCESS THAT'S BEEN IN
22 PLACE BUT I ALSO UNDERSTAND THAT JUDGE PROCTOR
23 HAS NOW GIVEN US ESSENTIALLY SOME MARCHING ORDERS
24 SAYING FIND SOME WAYS TO STREAMLINE THE DISCOVERY
25 IN THIS CASE. I CAN'T GO BACK TO JUDGE PROCTOR

1 AND SAY, WELL, YOU KNOW, JUDGE, I CAN'T HELP YOU
2 WITH THAT BECAUSE WE HAVE THIS PROCESS IN PLACE.
3 WHAT AM I SUPPOSED TO DO?

4 MR. CAMPBELL: YOUR HONOR, IF, FOR
5 EXAMPLE, IF THEY WANT THE, I GUESS THE LIST OF
6 POSSIBLE EXHIBITS, THAT'S SOMETHING WE CAN
7 PRODUCE TO THEM. THAT ITSELF IS NOT PROTECTED BY
8 THE PROTECTIVE ORDER.

9 THE COURT: SURE, JUST A WITNESS LIST
10 OR AN EXHIBIT LIST. THE LIST ITSELF.

11 MR. CAMPBELL: BUT WHEN YOU GET INTO
12 THE GUTS OF HAVING TO DECIPHER THE PROBLEM IS WE
13 JUST CAN'T TURN OVER. THE COURT CAN ORDER US TO
14 DO IT, BUT WITHOUT IMPUGNING THE INTEREST OF
15 THESE HOSPITALS IN MICHIGAN, IT'S NOT A SIMPLE
16 MATTER.

17 THE COURT: AND I WILL MAKE CLEAR TO
18 EVERYBODY HERE THAT I AM NOT IN ANY SORT OF WAY
19 GOING TO TRY TO INFRINGE UPON THE PROTECTIVE
20 ORDERS ENTERED BY THE MICHIGAN COURT. I HAVE A
21 VIEW OBLIGATION TO RESPECT THOSE PROTECTIVE
22 ORDERS JUST LIKE ANYBODY ELSE DOES.

23 MR. CAMPBELL: IF YOU WANT US TO TURN
24 OVER A LIST OF POTENTIAL EXPERTS FROM BLUE CROSS'
25 STANDPOINT, IF IT'S NOT PROTECTED, IF YOU WANT US

1 TO TURN OVER, WE CAN DO THOSE THINGS, YOUR HONOR.
2 BUT THE PROBLEM IS, I WOULD SUGGEST, THAT WE HAVE
3 TO TURN OVER A LIST OF ALL THESE THIRD PARTIES,
4 THAT KNOWLEDGE IS ALREADY WITHIN THE HANDS OF THE
5 PLAINTIFF'S ATTORNEYS. IF YOU ORDER US TO DO IT,
6 WE'LL DO IT. BUT IF THEY HAVE ALREADY GOT IT,
7 WHY DO WE HAVE TO GO BACK AND SEARCH THROUGH
8 THAT? BECAUSE MANY OF THOSE PEOPLE, OR THOSE
9 INSTITUTIONS, THEY SERVED THE SUBPOENAS IN THAT
10 CASE AS NON-PARTIES.

11 SO, YOUR HONOR, WE UNDERSTAND THE
12 COURT'S FRUSTRATION. WE THINK IT CAN BE DEALT
13 WITH IN THIS CASE WITHOUT DOUBLING THE BURDEN OR
14 TRIPLING THE BURDEN ON THE DEFENDANT. AND THAT'S
15 WHAT WE ARE ASKING THE COURT TO DO. WE HAVE GOT
16 TO DEAL WITH THAT ISSUE, YOUR HONOR, AND WE
17 ARE -- DISCOVERY IN THIS CASE, THE REQUEST JUST
18 TO GO BACK 25 YEARS OR 20 YEARS, WE ARE TRYING TO
19 NEGOTIATE THAT DOWN. THE AETNA LITIGATION
20 DOCUMENTS, THE SERVING OF THEM GO BACK YEARS.
21 MANY HAVE NOTHING TO DO WITH THIS CASE. BUT,
22 YOUR HONOR, WE ARE WILLING TO TRY TO COMPLY WITH
23 AN ORDER THE COURT GRANTS US TO DO. BUT WE THINK
24 FOR US TO HAVE TO SPEND HOUR AFTER HOUR
25 DECIPHERING THROUGH SEVEN MILLION DOCUMENTS IS

1 UNFAIR. UNTIL WE AT LEAST SEE HOW THIS PROCESS
2 IN THIS COURT WORKS AND IF THIS CAN BE MOVED
3 ALONG. AND THAT'S WHAT WE ASK FOR, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MR. CAMPBELL: WE ASK FOR A FAIR
6 BURDEN, NOT AN UNFAIR BURDEN.

7 THE COURT: I UNDERSTAND.

8 MR. CAMPBELL: THANK YOU.

9 THE COURT: I WILL DO MY BEST TO TRY TO
10 ACCOMMODATE THAT.

11 MR. RAGSDALE? IS IT TRUE THAT ONE OF
12 YOUR PLAINTIFF'S COUNSEL EFFECTIVELY COULD PUT
13 TOGETHER THE LIST OF THE THIRD PARTY HOSPITALS OR
14 ENTITIES THAT YOU WOULD NEED TO GET PERMISSION
15 FROM?

16 MR. RAGSDALE: THE FIRST TIME I HAVE
17 HEARD THAT WAS TODAY. I HAVE NOT SPOKEN WITH THE
18 GUSTAVSON FIRM. I WILL BE HAPPY TO. I THINK THE
19 MOST IMPORTANT INFORMATION WAS THE FACT THAT YOU
20 WERE ABLE TO ELICIT THE FACT THEY CAN'T USE ANY
21 OF THAT INFORMATION FOR THE SAME REASONS BLUE
22 CROSS, IN MY MIND, THE PROTECTIVE ORDER IS THAT
23 INFORMATION IS PROTECTED. NOW, WHETHER OR NOT
24 THEY CAN JUST TELL US HERE WITH THE 15 THIRD
25 PARTIES THAT PRODUCED INFORMATION OR NOT, WE CAN

1 CERTAINLY ASK. I DON'T KNOW THE ANSWER TO THAT,
2 FRANKLY.

3 THE COURT: DO WE EVEN HAVE A JUDGMENT
4 ABOUT, YOU SAY 15, ARE WE TALKING ABOUT PERHAPS
5 15 WHO ARE, I SORT OF IMAGINE, IT MAY BE SEVERAL
6 HUNDRED?

7 MR. RAGSDALE: WE DON'T KNOW THE
8 ANSWER TO THAT. THAT INFORMATION, IT SEEMS TO
9 ME, IS IN THE POSSESSION OF BLUE CROSS. IT COULD
10 HAVE BEEN INCLUDED ON THIS HANDY CHART BUT WAS
11 NOT. FOR EXAMPLE, JUDGE -- LET ME JUST SAY, IF
12 YOU JUST LOOK AT THE TRIAL EXHIBITS WHICH IS THE
13 HEART OF WHAT WE ARE ASKING FOR, THAT'S ONLY
14 7,000, 6,900 DOCUMENTS. THAT MAY SEEM LIKE A
15 LOT, MAYBE IN A CAR WRECK CASE, BUT IT'S A DROP
16 IN THE SOMETHING, NOT EVEN A BUCKET IN THIS CASE.
17 6,900 HUNDRED -- AND LET ME POINT OUT, OF THOSE,
18 ACCORDING TO THE CHART, 1,785 ARE BLUE CROSS
19 EXHIBITS DESIGNATED AS CONFIDENTIAL.

20 NOW, I DON'T KNOW WHETHER THAT MEANS
21 BLUE CROSS IS WHO DESIGNATED THEM AS
22 CONFIDENTIAL --

23 THE COURT: THAT'S WHY IT'S HARD TO
24 TELL ABOUT THAT. MIGHT AS WELL BE 1,785 IS JUST
25 THE NUMBER OF EXHIBITS BLUE CROSS DESIGNATED AS

1 EXHIBITS AND SOME OF THOSE MAY WELL BE SOMETHING
2 THEY OBTAINED FROM A THIRD PARTY UNDER THE
3 PROTECTIVE ORDER. I MEAN, WHO KNOWS?

4 MR. RAGSDALE: BUT I WOULD SAY THIS,
5 JUDGE. SOMEBODY HAD TO COMPILE THIS LIST.
6 SOMEBODY HAD TO GO THROUGH AND LOOK AT THE
7 EXHIBITS AND SAY HAS IT BEEN DESIGNATED AS
8 CONFIDENTIAL? HOW HARD WAS IT TO SAY "AND BY
9 WHOM?" BECAUSE THAT'S THE CRITICAL FACT. IF
10 AETNA, IN FACT, MR. CAMPBELL SAYS HIS UNDERSTAND
11 FROM TALKING TO AETNA IS AETNA HAS NO PROBLEM
12 WITH ITS EXHIBITS, I DON'T WANT TO REPRESENT WHAT
13 AETNA SAID OR HASN'T SAID. BUT IF THAT'S TRUE,
14 YOU HAVE GOT, OF THAT 6,900, 4,500 OF THOSE
15 EXHIBITS BELONG TO BLUE CROSS AND AETNA. IF
16 AETNA HAS NO OBJECTION, BLUE CROSS CAN'T HAVE AN
17 OBJECTION TO THINGS THAT THEY ARE THE ONLY ONES
18 THAT ARE DESIGNATING THEM AS CONFIDENTIAL.

19 LET ME SPEAK FOR A MOMENT TO THESE
20 LETTERS INVOLVING THE HOSPITALS. ASIDE FROM THE
21 FACT THOSE HOSPITALS ARE PUTATIVE CLASS MEMBERS
22 REPRESENTED BY PROVIDERS' COUNSEL IN THIS CASE,
23 IF THEY DIDN'T DESIGNATE THOSE LETTERS AS
24 CONFIDENTIAL AND BLUE CROSS IS THE ONLY ONE THAT
25 DID, THEY HAVE GOT NO GROUNDS TO OBJECT TO THOSE

1 DOCUMENTS BEING PRODUCED IF BLUE CROSS IS THE
2 ONLY ONE WHO FELT THEY WERE SUBJECT TO PROTECTIVE
3 ORDER, AND THAT'S TRUE OF ALL THESE THIRD
4 PARTIES. IF BLUE CROSS IS THE ONLY PARTY THAT
5 DESIGNATED THEM AS CONFIDENTIAL, THEY SHOULD BE
6 PRODUCED IN THIS CASE SUBJECT TO THE PROTECTIVE
7 ORDER THAT EXISTS HERE.

8 WHAT I DID NOT HEAR, JUDGE, IS WHEN
9 THEY GET AROUND TO, SOMETIME BEFORE NEXT JULY, TO
10 OUR REQUEST FOR PRODUCTION, THAT THEY WILL NOT
11 OBJECT BASED ON THE PROTECTIVE ORDER IN THE
12 MICHIGAN CASE. BECAUSE IF THEY DO, YOU'RE RIGHT,
13 WE ARE RIGHT BACK WHERE WE ARE NOW. IF THEY WILL
14 STIPULATE TODAY THAT THEY WILL RAISE NO
15 OBJECTIONS BASED ON THAT PROTECTIVE ORDER THEN
16 MAYBE WE SOLVE THAT PROBLEM. I SUSPECT YOU WON'T
17 GET THAT STIPULATION.

18 YOU ALSO WON'T GET A STIPULATION THESE
19 SAME DOCUMENTS AREN'T GOING TO BE OBJECTED TO ON
20 THE SAME RELEVANCY GROUNDS THAT THEY FILTER IN
21 AND OUT DEPENDING WHETHER OR NOT THEY WANT TO
22 TALK ABOUT BURDEN OR WHETHER THEY WILL PRODUCE
23 THEM. IN WHICH CASE, WE MAY NEVER SEE THESE
24 DOCUMENTS PRODUCED FOR MONTHS AND MONTHS AND
25 MONTHS, AND THAT'S CONTRARY TO WHAT JUDGE PROCTOR

1 AND WHAT THIS COURT HAS BEEN TRYING TO DO IN THIS
2 CASE.

3 I WOULD SAY THAT, JUDGE, IN THIS
4 INSTANCE, THERE IS CERTAINLY A LARGE -- LET ME
5 JUST SAY THE OFFER TO GIVE US AN EXHIBIT LIST OR
6 A LIST OF THE PERSPECTIVE EXPERTS, FIRST TIME WE
7 HAVE HEARD THAT IS TODAY. THAT'S THE FIRST
8 GLIMPSE WE HAD OVER THE STONE WALL ON THIS ISSUE
9 AT ALL. AND I THINK IF THIS COURT CAN IDENTIFY
10 THOSE DOCUMENTS WHICH ARE CLEARLY OUTSIDE THE
11 PROTECTIVE ORDER, OR AT LEAST OUR ONLY SUBJECT OF
12 PROTECTIVE ORDER BECAUSE BLUE CROSS PUT THEM
13 SUBJECT TO THE PROTECTIVE ORDER, AND PROVIDE US
14 WITH THE PRELIMINARY EXHIBIT LIST AND MAKE THEM
15 SUPPLEMENT THIS LIST TO PROVIDE US WITH THE
16 IDENTITY OF WHOEVER DESIGNATED THOSE DOCUMENTS AS
17 CONFIDENTIAL, THEN WE GO A LONG WAY TO FINDING
18 OUT WHETHER OR NOT THESE ARE REAL OBJECTIONS OR
19 WHETHER THIS IS WHAT WE THINK IT IS, WHICH IS AN
20 EFFORT TO MAKE SURE THAT THEY CAN HIDE WITHIN THE
21 LARGER PROCESS THAT WE ARE GOING THROUGH THAT'S
22 TAKEN MONTHS, LARGELY BECAUSE THEY ARE ONE OF
23 MANY DEFENDANTS THAT WE HAVE TO DEAL WITH. AND
24 THAT GIVES US AN OPPORTUNITY TO GET TO THE REAL
25 CORE DOCUMENTS THAT WE FEEL LIKE WE ARE ENTITLED

1 TO FROM THE MICHIGAN LITIGATION.

2 THE COURT: ALL RIGHT.

3 ANYTHING ELSE, MR. CAMPBELL?

4 MR. CAMPBELL: JUST ONE OR TWO POINTS,
5 YOUR HONOR.

6 THE COURT: SURE.

7 MR. CAMPBELL: NUMBER ONE, DURING THE
8 CASE IN MICHIGAN, NUMEROUS HOSPITALS OBJECTED TO
9 INTERVENTION PETITIONS SEEKING THESE DOCUMENTS.
10 AND THEY OBJECTED TO THE BLUE CROSS DESIGNATED
11 DOCUMENTS --

12 THE COURT: I WILL ASK YOU THE SAME
13 GENERALS QUESTION AS MR. RAGSDALE. DO WE HAVE A
14 JUDGMENT HOW MANY THIRD PARTIES WE ARE TALKING
15 ABOUT? ARE WE TALKING ABOUT 25 OR TALKING ABOUT
16 350?

17 MR. STENERSON: BETWEEN 2- AND 300,
18 YOUR HONOR.

19 MR. CAMPBELL: BARRY HIT THE NAIL ON
20 THE HEAD. MANY OF THE HOSPITALS ARE HIS PUTATIVE
21 CLIENTS, AND HE KNOWS WHO THEY ARE IN MICHIGAN.
22 IT'S EASY TO FIND THEM IF THEY ARE IN THIS CLASS
23 OR THIS PUTATIVE CLASS. WHY CAN'T THEY GET
24 CONSENT FROM THEM? OR WHY CAN'T THEY SUBPOENA
25 THEM? THEY ARE PUTATIVE CLASS OF PROVIDERS IN

1 MICHIGAN --

2 THE COURT: I GUESS THE FLIP SIDE OF
3 THE QUESTION, HOW DIFFICULT IS IT FOR YOU TO GIVE
4 HIM A LIST OF 250 NAMES?

5 MR. CAMPBELL: YOUR HONOR, YOU KNOW, WE
6 CAN GIVE IT TO HIM. OUR POSITION IS THEY ALREADY
7 HAVE IT. THEY HAVE HAD IT, THEY HAD IT IN THAT
8 CASE, AND IT'S, AGAIN, IT'S PART OF THE PILING ON
9 THE BURDENS ON THE DEFENDANT BECAUSE WE ARE
10 FRUSTRATED, CAN'T GET DOCUMENTS AS QUICKLY AS WE
11 WANT. I DON'T HEAR ANY OFFER TO REDUCE THOSE
12 BURDENS. I'M SAYING, YOUR HONOR, IF BARRY COMES
13 BACK AND REPRESENTS TO THIS COURT WE DON'T HAVE
14 THE LIST, THEN, SURE, WE CAN GIVE THEM THE LIST.
15 BUT IF THEY HAVE GOT IT ALREADY AND IT'S PART OF
16 THEIR PUTATIVE CLASS, WHY CAN'T THEY GET CONSENT
17 FROM ALL OF THEIR CLIENTS?

18 I WILL SAY THOSE HOSPITALS ARE SO
19 INFLAMED ABOUT THE PRODUCTION OF THAT INFORMATION
20 THOUGH YOUR HONOR AND THE SETTLEMENT HEARING ON
21 THE SHANE CLASS SETTLEMENT, 29 OBJECTED TO ANY,
22 ANY, AND THE SETTLEMENT DOCUMENTS, ANY DISCLOSURE
23 OF ANY OF THEIR INFORMATION. TWENTY-NINE
24 DIFFERENT HOSPITALS FILED PLEADINGS IN THE COURT,
25 AND DURING THE CLASS SETTLEMENT HEARING. SO

1 THAT'S HOW STRONG THIS ISSUE IS.

2 I AM SPEAKING ABOUT THEIR PUTATIVE
3 CLIENT. IT SEEMS LIKE TO ME THERE ARE TWO.
4 THERE ARE REALLY TWO ALTERNATIVES, AND THEY ARE
5 SOMEWHAT QUICK. SEEK TO INTERVENE AND GET THE
6 JUDGE TO LIFT IT AS TO EVERYTHING OR WHOEVER YOU
7 WANT TO HAVE IT LIFTED AS TO, OR GET THE CONSENT
8 FROM YOUR CLIENTS.

9 AND, YOUR HONOR, IF THEY REPRESENT WE
10 DON'T KNOW WHO OUR CLIENTS ARE, WE DON'T KNOW WHO
11 THOSE THIRD PARTIES WERE, SURE, I THINK WE MAY
12 HAVE A BURDEN TO GIVE THEM A LIST IF YOU ORDER US
13 TO DO SO. AND I AM PREPARED TO DO THAT, YOUR
14 HONOR. BUT I THINK THEY ALREADY HAVE IT.

15 AND MR. STENERSON IS GIVING YOU HIS
16 REPRESENTATION OF THEIR INVOLVEMENT. THEY WERE
17 INVOLVED AND THEY KNEW THEM. THEY SAT IN
18 DEPOSITIONS, THEY NEGOTIATED THE SHANE
19 SETTLEMENT. I DON'T KNOW HOW THEY COULD COME
20 INTO COURT AND SAY WE DON'T KNOW IF WE HAVE IT OR
21 NOT OR WE DON'T HAVE IT, BECAUSE THEY WERE THERE
22 IN MICHIGAN IN AN ACTIVE ROLE ALL THE WAY
23 THROUGH, YOUR HONOR.

24 THANK YOU.

25 THE COURT: THANK YOU. ANYTHING ELSE?

1 MR. RAGSDALE: THE ONLY OTHER THING
2 THAT I WOULD ADD IS NOT ON THIS MOTION, JUDGE.
3 WE HAVE NOW FILED THREE DISCOVERY MOTIONS; THE
4 DEFENDANT HAVE FILED A DISCOVERY MOTION. WE
5 WOULD LIKE ALL THOSE MOTIONS HEARD AT THE OCTOBER
6 5TH STATUS CONFERENCE, IF THAT'S A POSSIBILITY.
7 I DIDN'T KNOW HOW TO RAISE THAT.

8 THE COURT: AMBER WAS POINTING OUT TO
9 ME WE GOT A NEW MOTION JUST THIS MORNING
10 APPARENTLY DEALING WITH SOME PROCEDURAL ASPECT.
11 I HAVEN'T SEEN IT BUT SHE WAS TELLING ME THIS IS
12 A QUESTION RAISED ABOUT PROCEDURAL ASPECTS WITH
13 30(B)(6) DEPOSITIONS.

14 MR. RAGSDALE: WE HAVE TWO MOTIONS TO
15 COMPEL WHICH ARE THE FORMALIZED VERSIONS OF THE
16 ISSUES WE RAISED PREVIOUSLY. WE HAVE ALSO FILED
17 THE MOTION TO AMEND THE PREVIOUS DISCOVERY ORDER
18 DEALING WITH 30(B)(6) MOTIONS. AND THEN THE
19 DEFENDANTS HAVE FILED A MOTION ASKING YOU TO
20 RECONSIDER THE SOUTH CAROLINA ISSUE INVOLVING --

21 THE COURT: THE SOUTH CAROLINA ISSUE, I
22 GUESS I AM JUST GOING TO HAVE TO LOOK AT THAT.
23 BECAUSE THAT'S ONE OF THOSE CURIOUS SORTS OF
24 DEALS WHERE -- ARE THEY ASKING ME TO RECONSIDER?
25 OR ARE THEY RELYING ON THE LANGUAGE OF 636 (B)(1)

1 TALKS ABOUT THE DISTRICT JUDGE, QUOTE,
2 RECONSIDERING WHAT I HAVE DONE? ARE THEY ASKING
3 ME -- THE SIMPLE QUESTION IS, DOES SOUTH CAROLINA
4 WANT ME TO LOOK AT IT AGAIN OR ARE THEY WANTING
5 TO GO APPEAL THAT TO JUDGE PROCTOR?

6 MR. RAGSDALE: I HESITATE TO SPEAK FOR
7 THEM BUT I WILL. MY UNDERSTANDING IS THEY WANT
8 YOU TO RECONSIDER THAT, SOME ASPECT OF YOUR
9 ORDER. BUT I THINK WE CAN GET THAT CLARIFIED FOR
10 YOU.

11 THE COURT: I GUESS THIS IS
12 PROCEDURALLY PROPER. I INTEND TO GO BACK THROUGH
13 MR. GENTLE, THE SPECIAL MASTER, TO TRY TO CLARIFY
14 THAT WITH SOUTH CAROLINA.

15 YOU KNOW, I AM HAPPY TO DO WHATEVER, I
16 JUST WANT TO KNOW WHAT YOU WANT.

17 MR. RAGSDALE: SURE.

18 THE COURT: DO YOU WANT ME TO LOOK AT
19 IT OR DO YOU WANT JUDGE PROCTOR TO LOOK AT IT?

20 MS. GAINER (VIA TELEPHONE): YOUR
21 HONOR, THIS IS EMILY GAINER. I DON'T KNOW IF YOU
22 CAN HEAR ME.

23 THE COURT: YES, I CAN.

24 MS. GAINER: YEAH.

25 THE COURT: A VOICE FROM THE EITHER.

1 MS. GAINER: GOOD POINT. WE ARE
2 ASKING YOUR HONOR TO HANDLE THAT. WE FILED A
3 MOTION WITH JUDGE PROCTOR, GRANTED, EXTENDING THE
4 TIME FOR OUR RECONSIDERATION SO THAT WE COULD
5 PURSUE THIS WITH YOUR HONOR.

6 THE COURT: OKAY. ALL RIGHT. DO YOU
7 HAVE ANY PROBLEM WITH THAT RECONSIDERATION BEING
8 SET ON THE OCTOBER 5TH DATE?

9 MS. GAINER: NO, YOUR HONOR, WE DON'T
10 HAVE ANY PROBLEM WITH THAT.

11 THE COURT: OKAY. ALL RIGHT.

12 ANYTHING ELSE THEN, MR. RAGSDALE?

13 MR. RAGSDALE: NOTHING FOR THE
14 PLAINTIFFS.

15 THE COURT: MR. CAMPBELL, ANYTHING
16 ELSE?

17 MR. CAMPBELL: NO, SIR, YOUR HONOR.
18 THANK YOU, YOUR HONOR.

19 THE COURT: THANK YOU VERY MUCH. I AM
20 GOING TO BE TRAVELING NEXT WEEK BUT HOPEFULLY
21 WEEK AFTER NEXT, CERTAINLY BY THE TIME, HOPEFULLY
22 THE OCTOBER FIFTH, I AM GOING TO GET YOU
23 SOMETHING OUT ON THIS. OKAY? THANK YOU.

24 (COURT IN RECESS.)
25

C E R T I F I C A T E

IN RE: BLUE CROSS BLUE SHIELD ANTITRUST
LITIGATION MDL 2406
CASE #: 2:13-CV-20000-RDP-TMP

I HEREBY CERTIFY THAT THE FOREGOING
TRANSCRIPT IN THE ABOVE-STYLED CAUSE IS TRUE AND
ACCURATE.

OCTOBER 30, 2015

LINDY M. FULLER, RMR, CRR, CBC
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DATE